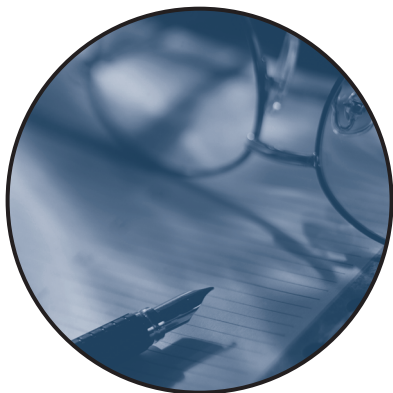


# Franchise and Personal Income Tax Appeals



Publication 81 LDA April 2007



STATE BOARD OF EQUALIZATION

## BOARD MEMBERS

BETTY T. YEE  
1st District  
San Francisco

BILL LEONARD  
2nd District  
Ontario/Sacramento

MICHELLE STEEL  
3rd District  
Rolling Hills Estates

JUDY CHU  
4th District  
Los Angeles

JOHN CHIANG  
State Controller

RAMON J. HIRSIG  
Executive Director

## Introduction

If you disagree with a Franchise Tax Board (FTB) decision about your liability for franchise or personal income taxes or about your eligibility for a refund, you can usually appeal that decision to the Board of Equalization. The five elected Board of Equalization Members serve as the administrative appellate body for final actions of the FTB, issuing opinions and rendering decisions interpreting and defining California's income tax laws. This publication describes the main steps to follow in the appeal process. Please note that since this is a Board of Equalization publication, the terms "we" and "us" are used in the text to mean the Board of Equalization and its staff.

If you need more help or information, please contact us (see page 10).

## Contents

Basic Considerations for Filing an Appeal . . . . .	1
Filing the Appeal. . . . .	2
Form of the Appeal. . . . .	3
Processing the Appeal . . . . .	4
The Briefing Process . . . . .	4
Deferring an Appeal. . . . .	7
The Board Hearing. . . . .	7
The Board Determination . . . . .	8
Further Appeal Rights . . . . .	9
Contact Information . . . . .	10

### NOTE

The statements in this publication are general and are current as of the date on the cover. The Revenue and Taxation Code and applicable regulations are complex and subject to change. If there is a conflict between the law and this publication, any decisions will be based on the law and not this publication.

To contact your Board of Equalization Member, see  
[www.boe.ca.gov/members/board.htm](http://www.boe.ca.gov/members/board.htm).

## Basic Considerations for Filing an Appeal

To have your appeal considered, you must

- File the appeal within the specified time limits and in the proper form, and
- Provide written information about your appeal, the points at issue, and your analysis of how the law should apply to your case.

After we receive your information and the FTB's reply, the Board of Equalization Members will evaluate your appeal and render an impartial decision. If you disagree with that decision, you can seek further consideration by paying the amount due and filing an action in superior court.

### Points to Remember

If you choose to file an appeal, please remember these key points:

- At any time during the process, you may stop your appeal by agreeing to a settlement with the FTB or submitting a written request for dismissal of your appeal for any reason.
- Evidence you previously submitted to the FTB will not be considered in your appeal unless you also submit it to us.
- All information you submit with your appeal must be in writing. Other than oral testimony given at a public hearing, we cannot accept any information presented orally, such as during a telephone call.
- If an FTB decision affects more than one person, each affected person must file an appeal on his or her own behalf. For example, if your appeal involves a joint assessment on a joint return, both you and your spouse must sign the appeal. The fact that you file an appeal does not protect your spouse's appeal rights. Your spouse must also sign the appeal or file a separate one.
- While your appeal is pending, you may wish to pay the full assessment of tax, penalty, and interest to stop the growth of interest due (interest compounds daily). You may do this at any time. The FTB will refund your payment, plus interest, if your appeal is successful. Please contact the FTB if you wish to make a full payment (see address on page 10).
- Anyone can represent you in your appeal, or you can represent yourself. Your representative does not need to be an attorney or an accountant. If you can't afford a lawyer, you may be able to get free legal help (see below).

### *Free Legal Help*

If you need help with your appeal and can't afford to hire an attorney, you may qualify for our Tax Appeals Assistance Program. In that program, participating law students provide free legal assistance under the supervision of experienced tax attorneys. For more information, call 916-322-2270.

The following sections discuss the appeals process in more detail.

---

While your appeal is pending, you may wish to pay the full assessment of tax, penalty, and interest to stop the growth of interest due.

---



---

All information in the appeal you file is available to the public, except your social security number, home street address, and home phone number.

---

## Filing the Appeal

### When You Can Appeal

You or your representative may file an appeal with us only after you have exhausted all of your administrative appeal rights with the FTB. You will know that you have exhausted these rights when the FTB issues you one of the following:

- *Notice of Action on Taxpayer's Protest* against a tax assessment.
- *Notice of Action on Cancellation, Credit, or Refund*, or a denial letter on a claim for a tax refund.
- *Notice of Determination Not to Abate Interest*.
- *Notice of Action to Approve/Deny* for innocent spouse relief requests. The notice may not use the words "innocent spouse." Look for phrases such as "Joint Liability" and "Non-Requesting Taxpayer" in the notice title. For more information on appeals of innocent spouse relief decisions, see discussion below.

You may also file an appeal if you filed a claim for refund with the FTB and that agency has not acted on your claim within six months.

### Time Limits for Filing an Appeal

You must file your appeal within

- 30 days of the date of the *Notice of Action on Taxpayer's Protest* or *Notice of Action* for innocent spouse relief requests, or *Notice of Determination to Abate Interest* (unpaid interest).
- 90 days of the date of a *Notice of Action on Cancellation, Credit, or Refund* or a letter denying your claim for refund, *Notice of Determination Not to Abate Interest* (paid interest).

The law does not specify a time limit for filing an appeal following the FTB's failure to act on your claim for refund. However, if you receive a *Notice of Action on Cancellation, Credit, or Refund* on your claim before you file such an appeal, the 90-day limit would then apply. The 90-day period would start from the date of the notice.

These time limits are defined by law and cannot be extended. If you miss the due date for filing an appeal of a tax assessment, your only recourse would be to pay the amount due and file a claim for refund with the FTB. If you were already appealing a denial of a claim for refund, your only recourse would be to file an action against the FTB in superior court. For more information on filing such an action, see page 9.

Generally, we accept the *postmark* date on your appeal as the filing date. If the last day to file an appeal falls on a Saturday, Sunday, or holiday, the filing deadline is extended to the next business day.

### Appealing More Than One Notice

If you receive *Notices* for several tax years, your appeal must refer to each *Notice* you disagree with. If the issues that form the basis for your disagreement are the same for more than one appeal, your separate appeals may be joined into one.

### Special Considerations for Innocent Spouse Relief Appeals

In California, married couples may file joint income tax returns. Both parties to the return are responsible for the full amount of tax due.

---

Time limits for filing your appeal are defined by law and cannot be extended.

---

Under certain circumstances, when you are a party to a joint state income tax return, you may file an “innocent spouse” relief request with the FTB. If the FTB grants your request, you will no longer be liable for all or part of the tax due. The FTB will notify both you and your spouse of its decision.

If the FTB denies all or part of your innocent spouse relief request, you may appeal the decision to us. Or if the FTB grants your request for relief, your spouse may appeal the FTB decision. In either case, the appeal must be filed within 30 days of the date the FTB mails the notices of action to both spouses.

As with other appeals, the Board of Equalization Members may overturn or uphold all or part of the FTB decision.

*Important note:* Since both parties who file a joint income tax return are responsible for the *full amount* of the tax due, both may participate in the appeal of the FTB decision. If the Board of Equalization Members uphold or grant a person’s request for innocent spouse relief, that person is no longer liable for the relieved tax. Their spouse will be fully responsible for all relieved tax liability. To protect yourself, you need to participate in the appeal process and make your own case.

*An Internal Revenue Service (IRS) grant of relief may affect the appeal*

State law generally requires the FTB to provide innocent spouse relief to a person who has received the same relief from the IRS. If the IRS grants relief while an appeal is pending with us, the FTB may revise its original decision to be consistent with the IRS action.

If during an appeal the FTB indicates that it may revise its original decision based on an IRS grant of relief to your spouse, we will notify you. You will generally have 90 days to appeal the revised FTB decision to us and provide any supporting information we request. However, the appeal period is only 30 days if you did not respond or choose to participate when your spouse originally filed an appeal with us.

Later sections of this pamphlet explain how innocent spouse relief appeals differ from other franchise and personal income tax appeals.

## Form of the Appeal

### Information Required

To file an appeal, you must write to us and provide the following information:

- Your name and address, or if you are filing for a corporation, the corporation’s name and address.
- Your social security number, or if you are filing for a corporation, the corporation’s identification number.
- The amount at issue and the tax year or years involved in the appeal. (If you agree that you owe any portion of the tax, please explain and provide details.)
- The date of the *Notice* (and a copy of the notice) you are appealing.
- A statement of the facts involved in the case.
- The legal points and authorities, including statutes and regulations, that support your position.
- Your or your representative’s daytime phone number.

Either you or your representative must sign your appeal.

Filing a complete  
appeal letter  
can expedite the  
appeal process.

---

Do not send  
your appeal to  
the Franchise Tax  
Board.

---

You should also enclose any documents that support your position.

*Please note:* Filing a complete appeal letter can expedite the appeal process.

### Submitting Your Appeal

You must mail or hand-deliver one copy of the letter, the *Notice*, and any supporting documents, to

Board Proceedings Division, MIC:81  
State Board of Equalization  
450 N Street  
P.O. Box 942879  
Sacramento CA 94279-0081

Or you may fax your appeal to 916-324-2597.

Do not send your appeal to the FTB. We will forward one copy of your appeal letter and supporting documents to the FTB.

If you have any questions regarding submitting your appeal, please call 916-322-2270.

### Processing the Appeal

We will send you a letter confirming receipt of your appeal letter. Then our staff will determine whether the Board of Equalization has jurisdiction to consider your case.

Once it has been confirmed that the Board of Equalization has jurisdiction over your appeal, we will send you an acknowledgment letter confirming your status as an appellant. We will also send a copy of the letter to the FTB.

If the Board of Equalization does not have jurisdiction over your appeal, we will send you a letter explaining why and listing possible alternatives. The Board of Equalization will not have jurisdiction if you filed your appeal after the time limits stated on the *Notice* you received from the FTB.

In addition, the Board of Equalization will lack jurisdiction in situations where your appeal is considered to be premature. Your appeal is premature if

- Your protest is still pending at the FTB, or
- Your claim for refund is still pending and less than six months have passed since you filed it.

### Innocent Spouse Relief Appeal Notification

After we receive an appeal of an FTB innocent spouse relief decision, we will send an acknowledgment letter to the spouse who filed the appeal. In addition, we will send the other spouse a notification letter and provide that person 90 days to also file an innocent spouse appeal. That letter will include a copy of the original appeal, with confidential information removed (for example, social security number, telephone number, and home address).

### The Briefing Process

#### Information Gathering

After acknowledging you as an appellant, we begin an information gathering (“briefing”) process. This process is a crucial step in your appeal. It is the *only* way we can get information about your case, so make sure that your briefs are as complete as possible.

---

Your briefs may be  
as simple as a letter.  
We need one  
copy of all items  
you submit.

---

Your briefs must be typed or handwritten on only one side of 8½-inch by 11-inch sheets of paper, in a type or font size of at least ten points or 12 characters per inch or the equivalent. Please note that except for the table of contents and exhibits (copies of related documents), a brief may not exceed 30 double-spaced pages or 15 single-spaced pages.

Your briefs may be as simple as a letter. They must address the facts and the points at issue in your case and state how you think the law applies. If possible, they should also cite the sections of the law or the court or Board of Equalization decisions that support your position. You or your representative must sign the briefs.

In addition, we may require you and the FTB to make an agreement that states which facts are not in dispute, which facts are in dispute, and the reasons for the dispute.

To review formal opinions of the Board of Equalization, which may be cited as precedent for other tax cases, see our website: [www.boe.ca.gov/legal/legalopcont.htm](http://www.boe.ca.gov/legal/legalopcont.htm). The website includes a list of income tax issues previously considered by the Board of Equalization. By clicking on the issues related to your appeal, you can see other cases that addressed those issues and how they were decided.

In the course of your appeal, we will ask you to send us briefs, correspondence, evidence, and supplemental documentation. We will send a copy of those items to the FTB. The FTB will send you copies of any briefs or correspondence it submits to us.

### Briefing Steps and Time Frames

To limit the time it takes to complete this information-gathering step, our regulations define a specific briefing process. It specifies a set amount of time for the filing of briefs and responses to them. Normal briefing involves giving you, when necessary, 90 days to supplement your appeal. The FTB then has 90 days to file a brief. Finally, you have an additional 30 days to file a reply. The postmark date on a brief is considered the filing date. These steps are discussed in more detail below and shown in the table on the next page. You will receive specific deadline information at each step in the briefing process.

*Note:* For appeals of innocent spouse relief decisions, the FTB deadline for filing a response brief is 90 days after all appeals are filed or 90 days after the deadline for the second spouse's appeal filing, whichever comes *later*.

### Required Sequence

The initial briefing sequence will depend on the completeness of your appeal letter. If your appeal is incomplete, you will be given 90 days to provide supplemental information. If the information contained in your original letter is adequate, the FTB will submit a brief within 90 days (see the table on the next page).

*Please Note:* If you fail to supplement your original appeal with additional information when we ask for it, your appeal may be dismissed. If you or the FTB miss any other response deadline without obtaining an extension from us, the briefing process will stop. Your appeal will then enter the next stage of the appeal process.

After the FTB files its brief, we will send you a letter informing you that you have 30 days to file a reply (see the table on the next page).

The letter will also give you three options for continuing your appeal. You can choose to

- Appear before the Board of Equalization Members and present your case,

- Have the Board of Equalization Members decide your case without appearing before them, or
- Have your appeal dismissed.

If you choose to reply to the FTB's brief, your written "supplemental brief" should address only those points of disagreement you have with the FTB's brief. You must send us a copy.

It is important that you file this brief within the 30-day deadline. If you miss the deadline, the briefing process will end.

The filing of your supplemental brief normally ends the briefing process.

### Steps Allowed at Our Discretion

In extraordinary situations, the FTB may be given 30 days to file a supplemental brief in response to your supplemental brief. The FTB will send a copy to you.

If the FTB files a supplemental brief, you will have the option to file an additional brief within 30 days. Your response will be the final brief in the briefing process.

### Schedule Changes and Extensions

Briefing Steps and Response Deadlines	
Typical steps after you file your appeal <sup>1</sup>	Response deadline
When your appeal is considered complete, we notify you and FTB in writing. If necessary, we ask you to submit supplemental information before this determination is made.	If supplemental information is required — 90 days from the date of our letter requesting supplemental information. <sup>2</sup>
FTB submits a brief responding to your appeal.	90 days from the date of our letter acknowledging that your appeal is complete.
You file a supplemental brief responding to FTB's brief. (optional)	30 days from the date of our letter acknowledging receipt of FTB's brief.
Additional Briefing	
Steps allowed at our discretion	Response deadline
With our permission, FTB files a supplemental brief responding to your supplemental brief.	30 days from our letter to FTB granting permission to file.
You file a brief in response to FTB's supplemental brief. (optional)	30 days from our letter acknowledging receipt of FTB supplemental brief.
Briefing Process Ends	
<sup>1</sup> If you or the FTB miss a response deadline without first obtaining an extension, the briefing process will generally stop (see page 7). Your appeal will then enter the next stage of the appeal process.	
<sup>2</sup> If we ask you to provide supplemental information and you do not provide it within the time period allowed, your appeal may be dismissed.	



At our discretion, changes to the briefing schedule can be made in two situations:

- If a party can show extreme hardship, or
- If both you and the FTB agree to extend a filing deadline.

To seek the FTB's agreement for a briefing extension prior to the due date, you should write to the attorney whose name and address appear on the FTB's brief, and send a copy of your letter to us. You should contact the FTB attorney as early as possible *before* the due date you wish to extend.

All requests for changes or extensions must be in writing and must be filed with us *before* the due date of the brief.

## Deferring an Appeal

You or the FTB can request a deferral of the appeal if there is enough reason and both parties agree. However, under certain circumstances, we may grant a deferral requested by only one party. We may grant a deferral for any of these reasons:

- You are negotiating with the FTB to reach a settlement.
- You or the FTB are waiting for a pending court, Board of Equalization, or Internal Revenue Service decision that is based on the same points of law as those at issue in your case.
- You are filing for bankruptcy.

The party or parties seeking the deferral must submit a written request to us.

## The Board Hearing

### Your Options

If you want the Board of Equalization Members to decide your case after the briefing process is complete, you have two options. You may

- Have the Members decide your appeal based solely on the information submitted during the briefing process and without an oral hearing. The Members will make a decision on your appeal during a regularly scheduled public meeting.
- Request a hearing where you or your representative will be given an opportunity to present your case before the Members. Hearings are usually held in Sacramento and in the Los Angeles area. We will notify you of the hearing location approximately 60 days before the hearing date.

### You Have the Burden of Proof

It is important to remember that you generally have the burden of offering enough evidence to prove your case, such as statements, photographs, or records. An oral hearing gives you an opportunity to summarize and emphasize the points you feel support your position. You should make every effort to ensure that your presentation is clear, concise, and supported by sufficient evidence.

If there are facts in dispute in your case, you may wish to have witnesses testify or present written statements. Witnesses should not be used to simply restate information contained in the briefs you submitted in the briefing process. If you plan to have witnesses testify at your oral hearing, please let us know. You should also indicate the nature of the testimony they will give. The rules of evidence that apply to tax appeal hearings are detailed

You or the FTB can request a deferral of the appeal if there is enough reason and both parties agree.

in section 5079 of Title 18 of the California Code of Regulations. You may request a copy from us or see our website, [www.boe.ca.gov](http://www.boe.ca.gov).

## Before the Hearing

### *Hearing Notices*

We will send you and the FTB a *Notice of Hearing* and a *Response to Notice of Hearing* about 60 days before the date of your hearing. You must return the response form to keep your hearing date. If you do not return the form, your appeal will be scheduled for decision without an oral hearing.

### *Filing Exhibits*

You and the FTB may submit written evidence as exhibits for the hearing, including items such as sworn statements or photocopies of documents. While you may submit evidence up to the time of the hearing, it is best to submit exhibits about two weeks before the hearing date. This gives our staff and the Board of Equalization Members time to review them. Please provide nine sets of your exhibits, sorted and stapled. If any part of an exhibit contains the elements of a brief—that is, an argument regarding a point of view based on the facts of the case and legal authorities—we will not accept that part of the exhibit and will return it to you. For details, see California Code of Regulations article 7, sections 5070, subsection (d), and section 5075, subsection (e).

### *Contribution Disclosure*

Before the hearing, we will send you contribution disclosure forms. You, your representative, and anyone participating in the appeal for you must use the forms to disclose any contribution made to a Board of Equalization Member in the 12 months before the hearing (see Government Code section 15616, subdivision(e)). You must return the completed forms to us before your hearing. The Members may choose not to hear an appeal until the forms have been filed.

## The Hearing

A hearing generally progresses as follows:

- At the start of a hearing, a member of our appeals staff will introduce your case and state the issues of your appeal.
- You will present your case and then the FTB will present its case. The Members may allow each of you up to ten minutes.
- You may be given an additional five minutes to reply to the FTB presentation.
- The Members may ask questions of you and the FTB representative.

*Note:* The Members will be familiar with the arguments and evidence submitted before the hearing. If the Members feel they have enough information to decide your appeal, they may choose to end the hearing in less time than indicated above.

## The Board Determination

All Board of Equalization determinations for franchise and income tax appeals are made during public meetings.

Unless you request an oral hearing, all related briefs are forwarded to our Appeals Division, which prepares a suggested decision for consideration and adoption by the Members. As noted earlier, that decision will be made at a public hearing.

---

You must disclose any contribution made to a Board of Equalization Member in the 12 months before the hearing.

---

---

Once the Members decide your case, we will immediately inform you by mail.

---

When a hearing is held, the Members may do one of the following:

- Decide the matter immediately after they hear the case.
- Decide the matter at the end of that day's hearings or at a future meeting.
- Order additional briefs from you, the FTB, or both. After the additional briefing, the Members would decide the case without another oral hearing.

Once the Members decide your case, we will immediately inform you by mail. You will receive a copy of the decision and a cover letter stating the date on which the Members made the decision. The FTB will receive the same information.

Unless you or the FTB file a petition for rehearing, the Members' decision will become final in 30 days. If that decision modifies the original FTB determination in your favor, the FTB will issue an adjustment billing or refund after the decision becomes final.

## Further Appeal Rights

If you agree with the decision made by the Board of Equalization Members, you do not need to take any further action.

If either party to the appeal disagrees with the Members' decision, that party may file a "petition for rehearing" with us. You also may file an action in superior court. Both actions are explained in the following sections.

### Petition for Rehearing

If you disagree with the Members' decision, you may file a petition for a rehearing within 30 days of the date of the decision. The petition is a request for the Board of Equalization to hear your appeal a second time. The FTB has the same right to file a petition for rehearing. Your petition for rehearing should state any new facts or points of law applicable to your case and indicate how they would affect the outcome of your appeal. Please send us a copy of the petition (see page 10).

**Please Note:** A rehearing is normally granted only when one of the following occurs:

- An irregularity in the proceedings prevented fair consideration of the case.
- An accident or surprise occurs and it could not have been prevented by ordinary caution.
- There is newly discovered, relevant evidence which the party requesting the rehearing could not have reasonably discovered and provided before the Members' decision.
- There is insufficient evidence to justify the decision or the decision is contrary to law.

The Board of Equalization Members will decide on the petition during a regularly scheduled meeting, but they will not hold an oral hearing. If they grant a rehearing, you will be informed and given an opportunity to appear before the Members. If the Members deny your petition, the decision becomes final.

### Filing an Action in the Superior Court

If you disagree with the decision, you may pursue further consideration of your case by paying the tax due (if any) and filing an action against the FTB in superior court. For more information about such actions and how to file them, you should refer to the Revenue and Taxation Code or contact your private attorney or the FTB's legal staff.

---

Unless a petition for rehearing is filed, Board of Equalization decisions become final after 30 days.

---

## Contact Information

### State Board of Equalization

Board Proceedings Division, MIC:81  
State Board of Equalization  
450 N Street  
P.O. Box 942879  
Sacramento, CA 94279-0081  
916-322-2270

### Franchise Tax Board

Franchise Tax Board  
Legal Department  
P.O. Box 1720  
Rancho Cordova, CA 95741-1720  
916-845-3364

## Your Taxpayers' Rights Advocates

Both agencies have Taxpayers' Rights Advocates to help you with problems you cannot resolve through normal procedures.

### State Board of Equalization

Taxpayers' Rights Advocate, MIC:70  
State Board of Equalization  
450 N Street  
P.O. Box 942879  
Sacramento, CA 94279-0070  
phone: 916-324-2798  
fax: 916-323-3319  
[www.boe.ca.gov](http://www.boe.ca.gov)

### Franchise Tax Board

Taxpayer Advocate Bureau  
Franchise Tax Board  
P.O. Box 157  
Rancho Cordova, CA 95741-0157  
toll-free phone: 800-883-5910  
phone: 916-845-6614  
fax: 916-845-6614  
[www.ftb.ca.gov](http://www.ftb.ca.gov)

